

App. F. IX-4

Previous References
Law 104-33-1-4

Later References
Law Sep 8-34.
Law 6-34-324
" 104-33-7-8.

✓ 90
1933.
(Law

File No. 104-33

Serial Nos. 5

~~D~~ preserve

PRESERVED

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. one

Part B for July 34

SUBJECT.

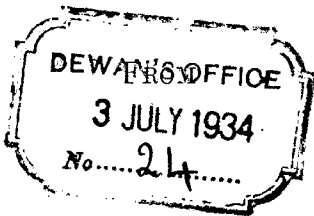
Copy of the H.Ct. order in Civil Petn. no
SS/33-34 directing the suspension of Mr. D.K. Hann
maultha Rao PBA, B.L. Advocate, Belone City from
practising for a period of one year from 29.6.34.

M. Abdul Aziz }
27.7.34.

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R.O.C. No. 164
Dis. 33-34

20/7/34
HIGH COURT OF MYSORE,
Public Office Buildings, Cubbon Park,

Bangalore, 29th June 1934
30



S. Venkata Ranga Iyengar, Esq., B.A., LL.M.,
Registrar, High Court of Mysore.

CHIEF SECRETARY
2 JULY 1934

R. RANGA RAO, Esq., B.A., B.L.,
Chief Secretary to the Government of His Highness
the Maharaja of Mysore,
BANGALORE.

SIR,

I am directed to forward herewith for information a
copy of the High Court Order in Civil Petition No. 55/33-34 directing
the suspension of Mr. D.K. Hanumantha Rao, M.A., B.L., Advocate,
Bangalore City from practising for a period of one year from the
29th June 1934, under Section 11 of the Legal Practitioners'
Regulation.

I have the honour to be,

Sir,

Your most obedient servant,

S. Venkata Ranga Iyengar
REGISTRAR.

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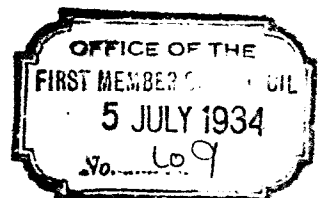
Member of Council

1) As informed by the
the order when received
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2) (I think this has
been received)

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Proceedings against Mr. Dr. Hanemann

Advocate under L.P. Reg.
No. 11.44
p

General and Revenue
Secretariat

File No.

104

of 1933.

[App. F. III-2

Serial
No.

DEWAN'S OFFICE

14 JULY 1934

No. 240

Copy of the order is submitted for peruse
with ref^{ce} to para 1 supra.

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SECOND MEMBER

12 JULY 1934

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reference to D. no. 20
P 634

2nd copy for the
247/34

Chief Secretary

Enc to D. Dis no. 164
33.34

Dated 30-6-84

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IN THE HIGH COURT OF MYSORE AT BANGALORE.

Friday the 29th day of June 1934.

PRESENT

Rajadharmapravina

Diwan Bahadur P. MAHADEVAYYA, B.A., B.L.,

CHIEF JUSTICE

And

Mr. Justice K. SHANKARANARAYANA RAO

CIVIL PETITION No. 55 of 33-34.

In the matter of a reference under Section 14 of the Mysore Legal Practitioners' Regulation, made on 7-3-1934, by the Subordinate Judge of Bangalore and received through the District Judge of Bangalore, (in connection with the proceedings in Miscellaneous Case No. 117 of 33-34 Insolvency Case No. 132 of 28-29 on the file of the said Subordinate Judge) bringing to the notice of the High Court the unprofessional conduct on the part of Mr. D.K. Hanumantha Rao, M.A., B.L., an Advocate of the High Court of Mysore and submitting the records for the orders of this Court.

Heard :- Messrs. A.C. Sampathiengar,
B. Vasudeva Murthi and H.V. Narayana Rao for Mr. D.K. Hanumantha Rao,

Mr. A.R. Nagesvara Iyer, Govt.
Advocate for Government.

O R D R

O R D E R.

This is a reference made under Section 14 of the Legal Practitioners' Regulation by the - Subordinate Judge, Bangalore, through the District Judge, Bangalore Division.

The opponent is an advocate of this Court since the 6th of September 1928.

The case against him is that though under instructions from P.W.1 Ameer Muhammad Khan he had issued a registered notice Exhibit B to Mr. and Mrs. Long demanding payment of the principal and interest alleged to be due on a promissory note, he later on accepted an engagement from Mr. Long, P.W.2, to conduct the proceedings in Insolvency Case No.132 of 1928-29 on the file of the Subordinate Judge, Bangalore, that the opponent having first prepared the insolvency petition Exhibit E describing P.W.1 as the 2nd creditor in Schedule B, subsequently managed to obtain funds from Mr. Long and paid Rs.190/- therefrom to P.W.1, thereby showing him undue preference, that with the object of keeping back this information from P.W.2 he erased from Exhibit E the name of P.W.1 and the sum specified as being due to him and substituted a different name and a different sum therefor, that having given Mr. Long the impression that the insolvency petition had been filed on the 30th January 1929, he actually filed it on the 21st March, after erasing the dates originally typed in that application and substituting the '20th March' therefor, that he obtained a --

sum of Rs.1,000/- from Mr. Long in the early part of March 1929 and also a further sum of Rs.200/- in 8 instalments of Rs.25/- each, promising to distribute the same amongst P.W.1 and the other creditors mentioned in the application but misappropriated the same, that the opponent, though aware of the fact that a sum of Rs.1,552-8-0 had been received by Mr. Long as gratuity, suppressed that fact and made a false and misleading statement to the Court in the objection statement Exhibit H, that he took signatures of the petitioner to several blank papers and that, in the course of the proceedings, he abruptly stopped away from the case, without any authority from the petitioner and without the permission of the Court.

These charges have been formulated by the learned Subordinate Judge under eight - different heads, and after a more or less - elaborate inquiry he has held that all these charges have been substantiated.

It is argued on behalf of the opponent that the evidence of P.W.1 is incredible as he came forward with his version at a very late - stage of the proceedings and had also failed to produce the promissory note under which he - claims, that similarly the story told by P.W.2, that he had entrusted the opponent with funds as referred to above, is quite inconsistent with his subsequent conduct referred to by the lower

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court itself in paragraph 13 of the reference, that from the mere circumstance that the opponent had failed to maintain regular accounts the lower court was not justified in drawing an inference adverse to him and that the materials on record were quite insufficient to sustain the charges brought against him. It was also urged that Mr. Long, who had admittedly received -- Rs.1,552-8-0 as gratuity and had failed to disclose that fact either in his application for insolvency or for a protection order or even in the proceedings that following^{ed}, must have made the false allegations in question with a view to exculpate himself from all blame, as his creditors had called upon him to account for the gratuity amount that he had received from the Binny Mills.

The learned Government Advocate, on the other hand, argued in support of the reference.

We have carefully examined the oral and documentary evidence on record in the light of the arguments addressed on both sides. That the opponent had issued, in the early part of - January 1929, the notice Exhibit B to Mr. and Mrs. Long on behalf of P.W.1, that the same came back undelivered and that the opponent returned the unopened registered cover to P.W.1 are facts which are not disputed. That P.W.2 had instructed the opponent to file the application for - insolvency some time before the 29th January 1929 is also clear from the fact that Exhibit III,

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which is a ~~xx~~ duplicate copy of the original insolvency petition prepared for being filed in court, is dated 29th January 1929. The Vakalat empowering the opponent to act in that case is dated the 30th idem, which also appears on the opponent's case cover Exhibit R relating to the insolvency case, as the date of presentation of the petition. The testimony of Mr. Long to the effect that the opponent gave him the impression that the petition had been filed on the 30th January 1929 appears therefore to be true. This circumstance would not have been of much significance but for some other facts appearing in evidence, to be presently referred to, which throw considerable doubt on the bona fides of the opponent.

As already indicated, Exhibit III bears the 29th January 1929 as the date on which it was signed and verified by P.W.2. The second creditor referred to in Schedule B thereto is P.W.1, and Rs.200/- is shown as the sum due to him on a promissory note dated 1st September 1928. But in Exhibit E, which is the original of that petition, the date and month previously typed have been erased in two places and '20th March' typed instead. Likewise, the name of the said creditor and the amount of the debt and the date have been erased and the name of one Kundanmull Ambulall, and Rs.80/- substituted.

It was urged that these alterations were innocent and were made with the knowledge and consent of P.W.2. But the Subordinate Judge

holds otherwise, and we see no reason to differ from him. Exhibit J shows that on the 6th March 1929 Mr. Long received from the Bangalore Woollen Cotton and Silk Mills Co., Ltd., whose employee he was, a sum of Rs.1,552-8-0 being the gratuity amount due to him and it is admitted that about the same time a sum of Rs.190/- was paid to - P.W.1 towards the promissory note executed in his favour by P.W.2. It is probable that, after having prepared Exhibit E on the 29th January, the opponent must have felt some delicacy in filing it in Court immediately, as his client, P.W.1, on whose behalf he had issued a registered notice to Mr. Long, had been mentioned in that petition as one of the creditors. He appears, therefore, to have waited till Mr. Long withdrew the gratuity amount from the Binny Mills and settled the claim of P.W.1.

As all this took place in March, Exhibit E could not be filed in Court as it then was and had to be suitably amended. Under normal conditions the opponent would have got a fresh application prepared, removing the name of P.W.1 from the B Schedule and filed the same in Court, after getting it duly signed and verified by Mr. Long, with ^{the} appropriate date written or typed thereon. But, unfortunately, he had intimated to Mr. Long, as indicated above, that the petition had - already been filed on the 30th January. He had also since got the claims of P.W.1 adjusted and the latter's name had to be removed from the list of creditors, as he was naturally anxious

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had received the gratuity amount from his employers was false. It may be observed that if he had properly advised his client when he -- received the said amount and arranged for the claims of his creditors being even partially satisfied therefrom, or had at least made regular deposits in Court of the instalments ~~fra~~ of Rs.25/- each, as and when received from his -- client, the latter would probably have not lost the lucrative post that he was then holding under Messrs. Binny and Co., and the failure of the opponent to discharge this duty not only cost Mr Long his appointment but also brought on him the ignominy which his adjudication as an -- insolvent naturally occasioned.

Under these circumstances, the opponent is guilty of grossly improper conduct and has ~~ren~~ rendered himself liable to be dealt with severely. But in consideration of his youth and inexperience ~~ence~~ at the time, and with a view to give him a chance of improving himself, we are inclined to deal with him somewhat leniently. We accordingly direct that he ^{be} suspended from all practice for a period of one year.

Sd/- P. Mahadevayya
CHIEF JUSTICE.

Sd/- R. Shankaraswamy
J U D G E.

to keep back this information from Mr. Long's other creditors. It is for these reasons that the opponent appears to have felt the necessity for filing the original petition itself as also of resorting to the questionable course of getting the portions thereof, referred to above, erased and fresh ones substituted, with a view also to avoid the suspicions of Mr. Long being roused.

It was argued that in Exhibit Q. the application for a protection order, which was admittedly prepared under Mr. Long's instructions on the 20th March, it was clearly mentioned that the application for adjudication had been filed on that very day and that P.W.2 must therefore, have been aware of the alteration of the dates in Exhibit E. But the evidence and the probabilities point to a different conclusion, and the clumsy manner in which Exhibit E has been tampered with supports the inference that these interpolations must have been made without the knowledge of P.W.2 and with the aforesaid intention.

This brings us to the more serious charge that the opponent having received Rs1000/- in March and also Rs200/- subsequently in eight instalments of Rs25/- each, for being deposited in Court for distribution amongst the creditors, had failed to account for the same except to the extent of Rs190/-. The finding of the lower court on this question is by no means quite clear. In paragraph 12 of the judgment the learned Subordinate judge

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Judge is inclined to believe the testimony of P.Ws. 1 and 2 on this point, but in paragraph 13 he appears to doubt it somewhat, and while observing in the last paragraph that the evidence is not enough to sustain either a criminal charge or a civil suit, he is of opinion that the circumstances appearing in evidence "are highly suspicious and throw much doubt on the integrity and fair dealing of the opponent, " and that they are sufficient to suitably deal with the opponent under the Legal Practitioners' Regulation.

As regards the alleged entrustment of Rs1000/-, we are of opinion that the evidence is meagre and inconclusive. In the first place the conduct of Mr. Long shows that he was anxious to file the insolvency petition before drawing the gratuity amount, making it appear that he had no assets, that he therefore instructed the opponent to file the petition in January and that he thereafter, i.e. on 6-3-1929, withdrew Rs1552-8-0. That being so, it is not likely that he would have informed his creditor P.W.1 of this fact or of the alleged payment of Rs1000/- to the opponent in March 1929, and the testimony of P.W.1, who is also interested in supporting this part of the case, does not seem creditworthy. In the second place Exhibit Q, the petition filed by P.W.2 for a protection order on the 21st March 1929, in which there is a specific recital about his willingness to pay Rs 25/- every month for distribution amongst his creditors, makes no reference to the

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entrustment of Rs 1000/- to the opponent. Even in the affidavit Exhibit I filed by him in Court on the 4th June 1929, he has reiterated that he had no assets. There is in the third place, the more important fact that either when Mr. Long was got arrested by two of his creditors Jeevaraj and Abdur Rahim, in August 1929, or when, about the same time, his goods were also attached and sold, he did not make enquiries as to how the opponent had dealt with this sum or intimate the fact to the Court, though the records show that, during this period, he used to appear in Court off and on.

The evidence of P.W.1 is no better. He deposes that he had entrusted the promote executed in his favour by Mr. and Mrs. Long to the opponent when he got the notice Exhibit B issued to them through the opponent in January 1929, that early in March the opponent informed him that he had received Rs1000/- from Mr. Long for distribution amongst his creditors and that out of this sum he had instructions to pay Rs 500/- to P.W.1, and that the opponent paid him on that occasion Rs190/- only with a promise to pay the balance later on. But as already indicated above, we find it difficult to believe this story. Having got the registered notice Exhibit B issued demanding immediate payment, it is unlikely that he would have failed either to take further action for the recovery of the debt or to appear in the insolvency proceedings, unless it be that he had received the sum of Rs 190/-

in full satisfaction of his claim and returned the document with an endorsement of discharge. He says that it was only a part payment that was endorsed on the promissory note, and that the document was left with the opponent; but it is difficult to believe that he would have done so as, by that time, he must have become aware of the fact that Mr. Long had secured the services of the opponent for the insolvency case.

It is significant that both he and Mr. Long started this theory of entrustment of Rs 1000/- to the opponent almost simultaneously and for the first time in the latter part of November 1930, and only after the other creditors had become aware of the fact that Mr. Long had received the gratuity amount from the Binny Mills ^{and} had requested the Court to call upon him to account for the same. P.W. 2 had thus to extricate himself from that difficult situation and P.W.1 was also interested in trying to get his name included in the schedule of creditors and to get some more money, if possible. Both P.Ws.1 and 2 had thus a motive to bring a charge of this kind against the opponent. We are therefore not prepared to believe the theory of entrustment of Rs 1000/- to the advocate, as it appears to be only an afterthought.

The testimony of P.W. 2 that he paid several instalments of Rs 25/- to the opponent for deposit in Court, stands however on a different footing and appears to be true. This statement is highly probabilsed by the undertaking given by Mr. Long to that effect not only in paragraph 6

of the Insolvency Petition Exhibit E but also in Exhibit ^QM, the application for protection order. Even the opponent's account book Exhibit W, which can by no means be said to be a regularly kept account, contains an entry of Rs 50/- on 11-3-1929 and a similar one on 1-4-1929, though it is stated therein that these amounts were received towards fees and expenses. There is a further entry of Rs 25/- on 3-8-1929 wherein it is specified that the amount was paid for being deposited in Court. It is admitted that no such deposit was ever made and that even this sum of Rs 25/- has not been accounted for up to date. The opponent was aware that it was on the basis of this undertaking that the Court had passed the protection order on 23-3-1929. That the opponent was also reminding P.W.2 of his duty to make regular deposits in Court is also clear from Exhibit II, which is a letter dated 4-7-1929 from the opponent to Mr. Long and in which he asks the latter "to kindly send the money to be paid to Court soon." We are therefore satisfied that P.W.2 must have, as deposed to by him, remitted these instalments to the opponent.

The next charge, i.e No.5, is that the opponent suppressed the fact of the petitioner having received a bonus and also denied the same subsequently in the statement Exhibit H filed in Court on 19-9-1930. As already observed above, the opponent must have been aware of the receipt

of

of the gratuity amount by P.W.2 in March 1929 and yet in Exhibit H, which curiously enough has not even been signed by the petitioner and which ^bhears only the signature of the opponent, the -- receipt of this sum has been specifically denied. This statement was false to the knowledge of the opponent and the finding of the learned Subordinate Judge on this point, must therefore be -- upheld.

The other charges do not appear to be of any consequence. It is true that the opponent had issued a notice on behalf of P.W.1 to Mr. and Mr. Long, but rightly or wrongly he had safeguarded the interests of P.W.1 by securing for him a sum of Rs.190/- before he filed Exhibit E in court. It may be that this ^{settlement} ~~statement~~ had the effect of getting preference shown to P.W.1, who was the opponent's client. But it is difficult to say that the object of the opponent in effecting this adjustment was anything more than to -- safeguard the interests of both his clients P.Ws.1 and 2, viz., by obtaining for the former at least a portion of the debt when he stood little or no chance of realising anything, and by securing for the latter the discharge of that debt by the payer of a much smaller sum than what had been demanded as per Exhibit B. This disposes of Charges 1 and 2 referred to in the reference.

There does not appear to be much substance in Charge No.7 either, viz., that the opponent --

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took signatures of P.W.2 to blank papers. If indeed the opponent had such signed papers in his possession he would not surely have been put ~~in~~ the necessity of making erasures and interpolations in Exhibit E, as shown above.

Charge No.8 relates to the opponent having stopped away abruptly from the case after -- September 1930, without the permission of the Court and without the consent of P.W.2. It is admitted that some time in November the papers relating to the case^e were all taken away from the opponent and that Mr. T. S. Ramaswami Iyer was engaged by P.W.2 to conduct the further -- proceedings in the case. Indeed the case cover Exhibit R and all office papers contained therein were produced in Court by the new Counsel and Mr. Long admits that by that time he had begun to distrust the opponent, and it is thus clear that he did not want the opponent to appear for him any longer. It would no doubt have been more satisfactory if the opponent had formally sought the permission of the Court before -- stopping away from the case, but his failure to do so is insufficient to justify a charge of this kind.

Much stress was laid on behalf of the -- opponent on the observation of the lower court in paragraph 18 of the reference to the effect that the evidence was insufficient to sustain a -- criminal charge or a civil suit, and it was urged

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that it must therefore be deemed to be insufficient even for purposes of proceedings under the Legal Practitioners' Regulation. But it must be remembered that while proceedings under the Regulation are undoubtedly judicial proceedings, they are not proceedings of a criminal nature. "They are special proceedings resulting from the inherent power of the courts over their officers. ~~There~~ Their object is to preserve the purity of the Courts and the proper and honest administration of the law..... to protect the Court and the public from legal practitioners who, disregarding the sanctity of their office, pervert and abuse the privileges annexed to the responsible office they have secured from the Court". See 49 Cal. 732 at 806. The real question for consideration in such cases is not whether the evidence is sufficient to establish criminal liability or to support a civil action, but whether it is clear enough to show that the legal practitioner is unworthy of the confidence reposed in him in the discharge of his professional duty in assisting the Court to do justice. As pointed out in -- 11 Bombay Law Reporter 1150 at 1151, "a high standard of rectitude, diligence, duty and zeal ought to be required of pleaders in the interests of the Bar", and any lapse from such a standard is likely to demoralize the legal profession.

We are satisfied that, judged by these tests, the materials on record disclose professional

misconduct

misconduct of a grave character on the part of the opponent. He gave P.W.2 to understand that the Insolvency Petition had been filed on the 30th January 1929, but in fact delayed doing so with the object of securing a benefit to P.W.1, under whose instructions he had -- himself issued a registered notice to P.W.2. After arranging to get Rs.190/- paid to P.W.1, he got his name erased from Schedule B -- appended to Exhibit E and substituted the name of a different creditor altogether, making a similar interpolation as regards the date and amount of the debt, with a view to keep back this information from the other creditors of Mr. Long. To make it appear that the petition was prepared only subsequently, he similarly got erased the previous dates that stood in Exhibit E and substituted "20th March" instead. He secured a protection order in favour of his client by giving an undertaking that a sum of Rs.25/- per mensem would be deposited ~~from him~~ in Court, and though he received these -- instalments from him he failed to pay them into Court. He was aware of the fact that Mr. Long had drawn from his employees Rs.1552-8-0 after he had given him to understand that the insolvency petition had been filed, and yet he -- suffered his client to make false statements to the Court that he had no assets of any kind. Indeed, without even securing the signatures of his client he filed the ~~objection~~ ^{objection} statement -- Exhibit H over his own signature, containing a statement that the allegation that P.W.2 had

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In reply please refer to
No. 808

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OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore, 30th June 1934.

Law 104-33-5

FROM
A. R. NAGESVARA IYER, Esq., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

The General Secretary to the Govt.
of H. H. The Maharaja of Mysore,
BANGALORE.

2/7/34
SIR,

With reference to Government Order No. P.4500-02/Law.104-33-4 dated the 28th March 1934, I have the honor to state that Civil Petitions Nos. 55 and 56 of 1933-34 on the file of the High Court of Mysore, (Government of Mysore VS. Mr. D.K. Hanumantha Rao - Advocate) References under Legal Practitioners' Regulation, came on for final disposal on 29-6-1934 and orders were passed as follows :-

In C.P.55/33-34 :- The Advocate is suspended from all practice for a period of one year;

In C.P.56/33-34 :- The case is remanded to the lower Court for further evidence and finding.

2. A copy of the Order has been applied for and the same will be sent to you as soon as it is received in this office.

I have the honor to be,
Sir,
Your most obedient servant,

M. Aggarwal
Government Advocate.

Submitted for perusal.

Copys of the order is awaited.

TSD
2/7.